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SUBJECT: HCMC BOARD OF GOVERNORS OUTLINES AMCHAM PRIORITIES

REF: (A) HO CHI MIN 1144, (B) HO CHI MIN 1131, (C) HO CHI MIN 955

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¶1. (SBU) During the monthly American Chamber of Commerce (AmCham) Breakfast on December 11, American business leaders in Ho Chi Minh City (HCMC) expressed frustration about the Government of Vietnam's (GVN) approach to trading rights and distribution rights, explained efforts to improve customs clearance processes and discussed student demonstrations against China. Looking to the Trade and Investment Framework Agreement (TIFA) Council meeting in Washington on December 17, the AmCham Board of Governors (BOG) hoped discussions would increase market access for U.S. companies and reverse a trend that AmCham perceives as the GVN interpreting WTO commitments as a ceiling rather than a baseline. End summary.

Trading and Distribution Rights

¶2. (SBU) During a monthly breakfast meeting with the Consul General on December 11, the Board of Governors of AmCham in HCMC raised trading rights and distribution rights as among the most significant impediments to their expansion in Vietnam (reftel), and referred to their AmCham position paper (at "[http://www.amchamvietnam.com/1863?PHPSESSID="](http://www.amchamvietnam.com/1863?PHPSESSID=)) as a source for the full AmCham position. Members' complaints against GVN policies fall into two areas: rules restricting importers to using a single, nation-wide distributor for each type (HS Chapter category) of good imported and a definitional problem concerning what is "retailing" and a "retail sales outlet."

¶3. (SBU) Members of the AmCham BOG argued that the restrictions on distribution networks (Circular 9, Article 3, 1, d) are inconsistent with paragraph 147 of Vietnam's Working Party Report and discriminate against foreign-invested enterprises (FIEs) in favor of domestic enterprises not subject to the same restriction. CG replied that his understanding was that the restrictions currently in place do not violate Vietnam's WTO commitments which are governed by the negotiated services schedule which liberalizes distribution rights for FIEs beginning in 2009. CG went on to add, however, that while the USG cannot argue that the restrictions on distribution rights represent violations of WTO commitments, he does agree that the restrictions represent bad economic policy that the GVN should change because it is hampering Vietnam's domestic economic

growth and development by creating artificial supply chain bottlenecks and thus increasing prices. CG explained that he has already made that argument to economic officials in southern Vietnam and in press interviews.

¶4. (SBU) AmCham complaints concerning the definition of "retailing" and "retail sales outlets" generally come from members importing industrial machinery, materials, coatings, chemicals and other items that are not normally thought of as "retail" items. As long as such items are sold via a contract signed with a foreign entity (such as an office in the USA or Singapore), they can be imported and delivered directly to the end user. In the past, however, some importers of such items brought in stock in advance that they would then sell to end users. The GVN has now defined such sales as "retail sales by a foreign company" and thus prohibits them prior to retail liberalization under the GVN's WTO agreement. Once again, at least some members take a legalistic approach to this question, arguing that GVN definitions of "retailing" and "retail sales outlets" conflict with WTO Central Product Classification (CPC) lists. AmCham members are pressing the Ministry of Industry and Trade (MOIT) on the motivation and implementation of Circular 9's Economic Needs Test.

Customs Clearance Issues

¶5. (SBU) A BOG member (representing express delivery) explained that AmCham is also working to improve Vietnam's customs procedures, working through ASEAN to promote pre-clearance standardization in Vietnam for express delivery and freight. However, this needs Ministry of Finance approval and Customs has balked at program elements, including waivers on low-duty consignments, more flexible business hours, de minimus values and requirements for additional automation. During the APEC year the "e-Manifest" pilot program worked well, but Customs stopped the program after APEC saying there was no legal basis for its continuation. Today, Vietnamese customs officials manually clear about fifty percent of the cargo coming in, creating "opportunities" for unscrupulous agents.

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Students Rally Against Chinese Announcement

¶6. (SBU) A member from the energy industry raised the December 9 student rallies in front of the Chinese Embassy and Consulate in protest of an announcement that Beijing will create an administrative unit covering the Hoang Sa (Spratly) and Truong Sa (Paracel) islands also claimed by Vietnam. One participant observed that the recent student protests are the first since the invasion of Iraq in 2003. Another member said that the police presence and controlled timing in Hanoi suggested an active government role in that protest. The press covered activities in Hanoi but not HCMC, suggesting events here might have been more spontaneous. In a significant break from past characterizations of the former government in Saigon, a December 6 Tuoi Tre article described the Navy of the Republic of South Vietnam as "defending the motherland" against China in 1974.

Looking Forward to the TIFA Council

¶7. (SBU) The members agreed that the December 17 TIFA Council in Washington would be a welcome opportunity to raise IPR, information technology (IT), trading rights and increased cooperation. BOG members reiterated their overall assessment that the pace of reform has slowed since WTO accession. On IT in particular, one member noted that second-hand equipment for air service operations was confiscated by Vietnamese customs as a "refurbished" product, a ruling that was reversed only after a great deal of wasted time and resources. A number of AmCham members believed that obtaining investment licenses in Vietnam has become more difficult over the past year, and hoped that the TIFA Council would be a vehicle for advancing the view that WTO commitments are a starting point and not the finish line for economic liberalization in Vietnam.

Comment:

18. (SBU) Although nominally a single organization, AmCham has separate offices in HCMC and in Hanoi with different board members and different executive officers. A member of the Hanoi AmCham board told Emboff in Hanoi on December 12 that AmCham's understanding of the trading and distribution rights issue was wrong. This member described some of the other issues cited in the AmCham position paper as setting up a "straw man" in dreaming up potential problems down the road that nobody in the Vietnamese government has suggested will occur and that nobody in AmCham has discussed with the Vietnamese government. The member also expressed concerns about how the AmCham position paper was released and pushed for a better process next time on clearing position papers with the board. In any event, the U.S. Mission will continue to work with U.S. businesses to expand their investment and sales in Vietnam in making the most of their trading and distribution rights. Mission Vietnam will also continue to use diplomatic channels to encourage the GVN to continue to implement and speed up economic reforms in all areas -- in order to move to a true market economy. In this regard, we note that USAID's economic growth programs, especially the Support for Trade Acceleration (STAR) and Provincial Competitiveness Initiatives (PCI) continue to assist Vietnam in staying on track in implementing reforms. End comment.

19. (U) This cable was coordinated with Embassy Hanoi.

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